

FOX VALLEY HEARING OFFICE
P.O. Box 7975
Madison, WI 53707

**APPEAL TRIBUNAL
DECISION**

State of Wisconsin
Department of Workforce Development
Unemployment Insurance Division

Telephone: (608) 266-8010
Fax: (608) 327-6498

Hearing No. 21405771AP

Mailed to:

In the matter of:

Employee: TRACY L LONG, APPELLANT

B.C. & S.S. No.: 01/***-**-0521

vs.

Employer: NOT APPLICABLE

**** FILE COPY ****

UI Account No.:

APPEAL RIGHTS

SEE THE DATE BELOW FOR THE TIME LIMIT.

IF YOU ARE APPEALING BECAUSE YOU FAILED TO APPEAR FOR THE SCHEDULED HEARING AND ARE REQUESTING A NEW HEARING, FOLLOW THE FAILURE TO APPEAR PROCEDURES ON THE REVERSE SIDE.

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IF YOU DO NOT UNDERSTAND THE PROCEDURES, PLEASE CALL THE UI HEARING OFFICE FOR ASSISTANCE.

DECISION: SEE ATTACHED DECISION WHICH AFFIRMS THE INITIAL DETERMINATION.

Employee appeared by:

IN PERSON

Employer appeared by:

NOT APPLICABLE

Administrative Law Judge	Dated and Mailed	Petition Must Be Received or Postmarked By:
CHRISTA SEYMOUR	DECEMBER 27, 2021	JANUARY 18, 2022

(SEE REVERSE FOR ADDITIONAL INFORMATION)

Decision mailed to:

TRACY L LONG, 937 MAIN ST, SAINT CLOUD, WI 53079-1474
VICTOR FORBERGER, 2509 VAN HISE AVE, MADISON, WI 53705-3849

THE DEPARTMENT'S DETERMINATION HELD: that, as of week 3 of 2021, the claimant was receiving social security disability insurance (SSDI) benefits. As a result, unemployment benefits were denied while the claimant was also receiving social security disability insurance benefits.

Based on the applicable records and evidence in this case, the appeal tribunal makes the following

FINDINGS OF FACT

The claimant began receiving SSDI payments for herself on October 13, 2020 (week 42).

The claimant initiated an unemployment benefits claim with the department for week 3 of 2021, the week ending January 16, 2021. The claimant filed an additional claim for the week ending February 13, 2021 (week 7).

The claimant was receiving Social Security Disability Insurance (SSDI) payments at the time she filed her claims for unemployment benefits. The SSDI payments have continued uninterrupted since October 2020. The claimant is not receiving Social Security Retirement benefits.

DISCUSSION

The issue to be decided is whether the claimant is ineligible for unemployment benefits as of week 3 of 2021 because of the receipt of social security disability insurance benefits.

Wisconsin Stat. §108.04(12)(f) provides:

1m. The intent of the legislature in enacting this paragraph is to prevent the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work.

2m. In this paragraph, "social security disability insurance payment" means a payment of social security disability insurance benefits under 42 USC ch. 7 subch. II.

3. a. Except as provided in subd. 3. b. to d., an individual is ineligible for benefits under this chapter for each week in the entire month in which a social security disability insurance payment is issued to the individual.

b. In the first month a social security disability insurance payment is first issued to an individual, the individual is ineligible for benefits under this chapter for each week beginning with the week

the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

c. Following a cessation of social security disability insurance payments to an individual and upon the individual again being issued a social security disability insurance payment, the individual is ineligible for benefits under this chapter for each week beginning with the week the social security disability insurance payment is issued to the individual and all subsequent weeks in that month.

d. Following cessation of social security disability insurance payments, an individual may be eligible for benefits under this chapter, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final social security disability insurance payment.

4. Information that the department receives or acquires from the federal social security administration regarding the issuance of social security disability insurance payments is considered conclusive, absent clear and convincing evidence that the information was erroneous.

Wisconsin Stat. § 108.04(2)(h) provides:

(h) A claimant shall, when the claimant first files a claim for benefits under this chapter and during each subsequent week the claimant files for benefits under this chapter, inform the department whether he or she is receiving social security disability insurance payments, as defined in sub. (12) (f) 2m.

Here, the claimant received SSDI payments prior to and during the time that she filed claims with the department for unemployment insurance benefits. Her SSDI benefits began in October 2020 and have continued uninterrupted to date. Unemployment insurance benefits and SSDI benefits both replace lost wages and are based on a claimant's past earnings record or prior wage history. See 42 U.S.C.A. § 423(a)(1) and (c)(1) and Wis. Stat. §§ 108.02(2)4 and (4m) and 108.05(1).

A claimant "actually receives" SSDI payments throughout an entire month (i.e., in every week of a month), even though it is only paid on one day. While the payments are only made one time per month, they cover the entire month. As such, the claimant "actually receives" SSDI payments every week, not just during the week they are paid. Accordingly, Wis. Stat. § 108.04(12)(f) disqualifies a claimant from receiving UI benefits in any week simultaneously covered by a monthly SSDI payment. *Dep't of Workforce Dev. v. LIRC*, No. 14 CV 3249 (Wis. Cir. Ct. Dane Cnty. May 27, 2015).

The claimant contended that being ineligible to receive unemployment benefits while receiving Social Security Disability payments is discriminatory. However, in *In re Monique S. McCurry*, UI Dec. Hearing No. 20602969MW (LIRC July 24, 2020), it was held that the claimant was ineligible for regular UI benefits while receiving SSDI. The commission rejected the claimant's argument that her disqualification from receiving regular UI benefits based on her receipt of SSDI constitutes illegal discrimination based on her disability. This argument was previously rejected by the commission in prior cases that were affirmed on judicial review. See *Giampalo v. LIRC*, Case No. 15CV201 (Wis. Cir. Ct. Juneau County, August 5, 2016); *Rose M. Hanley v. LIRC, DWD*, Case No. 17CV3322 (Wis. Cir. Ct. Milwaukee County, April 25, 2018).

CONCLUSIONS OF LAW

The appeal tribunal therefore finds that, as of week 3 of 2021, the claimant received social security disability insurance benefits, within the meaning of Wis. Stat. § 108.04(12)(f).

DECISION

The department's determination is affirmed. Accordingly, the claimant is ineligible for unemployment benefits as of week 3 of 2021 and while the claimant is receiving social security disability insurance benefits.

APPEAL TRIBUNAL

By: *Christa Seymour*
Christa Seymour
Administrative Law Judge